IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/06/2004

CORAM

THE HONOURABLE MR. JUSTICE A.K. RAJAN

Criminal Appeal No. 588 of 1996
and Criminal Appeal No. 455 of 1997

N.Balasubramaniam .. Appellant in CA588/96
Respondent in CA455/97

-Vs-

State of Tamil Nadu
rep. by the Inspector of Police
Vigilance and Anti-Corruption,
Coimbatore
(Crime No.1/92/AC/CB). .. Respondent in CA588/96
Appellant in CA455/97

!For Appellant
in CA588/96 &
for Respdt. in
CA 455/97 .. M/s. Ram & Ram

^For Respondent
in CA588/96 &
for Applt. in
CA 455/97 .. Mr. M.K.Subramanian
Govt.Advocate (Crl.Side)

Criminal Appeals filed against the judgment of the First
Additional Sessions Judge and Chief Judicial Magistrate, Coimbatore in SPL CC
No.1/93, dt.17.6.1996.

:J U D G M E N T

The accused was charged for offences punishable under Sections
7 as well as Sec.13(2) r/w Sec.13(1)(d) of the Prevention of Corruption Act,
1988 (hereinafter referred to as 'the Act'). Criminal Appeal No.588/96 is
against conviction and Criminal Appeal No.455/97 is against acquittal of one
of the charges.

2. The facts leading to the charges are as follows:

The accused was working as Revenue Inspector in South Avinashipalayam, Tirupur Taluk, Coimbatore district between 19.12.1990 and 31.3.1 992; he threatened to file a criminal complaint against one Ramasamy Gounder, father of Thangamuthu (P.W.1), for cutting neem trees standing in S.F.No.43 (Government Poramboke land). The accused demanded Rs.1,000/- from P.W.1 in order to release his father from the offence or to pay Rs.500/- for charging for a petty offence. On 28.3.1992, the accused obtained a sum of Rs.500/- as bribe. Hence, he was charged for the offences under Sections 7 and u/s.13(2) r/w 13(1)(d) of the Act.

3. The accused denied the charges; the prosecution has examined PWs 1 to 10, marked Exs.P1 to P26, and produced M.Os.1 to 7; accused examined DW1 and marked Exs.D1 to D9. The trial Court acquitted the accused of the charges under Section 7 of the Act; but convicted the accused under Section 13(2) r/w Sec.13(1)(d) of the Act and sentenced to undergo RI for one year, and imposed a fine of Rs.1,000/- in default SI for one month.

4. Aggrieved by the judgment, the accused has preferred the appeal against the conviction. The State has preferred the appeal against the acquittal of charge under Section 7 of the Act.

5. Both the counsel are heard.

6. The learned Government Advocate (criminal side) appearing for the State submitted that the charge under Section 7 of the Act also should have been held proved, and the acquittal from the said charge is not legally sustainable.

7. The learned counsel appearing for the accused submitted that the act complained of by the prosecution is only a single act of receiving Rs.500/-, and that act cannot attract both Sections 7 as well as Sec.13(2) r/w 13(1)(d) of the Act. The Counsel contended that the offences under Sections 7 and 13(2) r/w Sec.13(1)(d) of the Act are mutually exclusive. If a person is convicted under Section 13(2) r/w Sec.13 (1)(d) of the Act, he cannot be convicted also under Section 7 of the Act. In support of his contention, the learned counsel referred to the judgment of this Court by MALAI. SUBRAMANIAN, J. in C.A.No.667 of 1995, dt.28.2.2002, where it has been held as follows:

"....7. The appellant was convicted for a single act of taking bribe both under Secs.7 and 13(2) read with 13(1)(d) of The Prevention of Corruption Act, 1988. Sec.7 of the Act punishes any public servant who takes gratification other than legal remuneration as a motive or reward for doing any official act in exercise of his official functions. Here is case where the appellant in exercise of his official function, viz., measuring the land as a surveyor had demanded and also accepted bribe. Therefore, the facts of the case clearly fit in within Sec.7 of The Prevention of Corruption Act, 1988. Insofar as Sec.13(1)(d) is concerned, it speaks about the misconduct committed by public servants. There cannot be any dispute that accepting a bribe is a misconduct. But when once there is a direct penal provision covering the guilt of the

accused, he cannot be punished both under Sec.7 as well as under Sec.13(2) read with 13(1)(d) of The Prevention of Corruption Act. Sec.13(1)(d) is applicable in case where prosecution is unable to trap the accused and prove the actual demand and receipt of illegal gratification. Only in a case, where evidence is let in to the effect that by abusing his power, the public servant obtained either for himself or for pecuniary advantage then Sec.13(1)(d) is attracted. Where there is specific provision for punishing a public servant for illegal gratification, another provision punishing misconduct need not be invoked to punish the offender under two provision of law for a single act of receiving a bribe. Therefore, I am of the view that the facts of the case clearly attract the provisions under Sec.7 of The Prevention of Corruption Act, 1988 and therefore, he could not have been punished under Sec.13(2) read with 13(1)(d) of The Prevention of Corruption Act."

8. Relying upon the said judgment, the learned counsel for the accused submitted that when the act done by the accused does not attract Section 7, for the very same act the accused can not be punished under Section u/s.13(2) r/w 13(1)(d) of the Act. Therefore he contended that the appeal against acquittal filed by the State is not maintainable.

9. The learned Government Advocate (criminal side) submitted that the judgment of MALAI. SUBRAMANIAN, J. has been considered and distinguished in the case of KASI v.. STATE by P.D.DINAKARAN, J, (2003) MLJ (Crl.) 454, where it has been held that the accused could be tried for both the offences, namely, for the demand of illegal gratification punishable under Sec.7 of the Act, and also for the acceptance of bribe punishable under Section 13(1)(d)(i) and (ii) of the Act; such charges are not barred by the Prevention of Corruption Act.

10. At this stage, the learned counsel for the accused submitted that in view of the conflicting decisions on the same point of law, the matter may be referred to a larger Bench, so that an authoritative pronouncement can be obtained.

11. The question of referring the case to a Division Bench would arise only if the appellant is to be convicted for offences under Sections 7 as well as 13 of the Act. In this case though charges were framed under two Sections, the Court has convicted the accused only under Section 13(1)(d). Only if this Court comes to a conclusion that the acquittal under Section 7 is to be set aside, it may require reference to a Division Bench. Until the Court comes to a conclusion that the appeal against acquittal is to be set aside, the question of referring to a Bench does not arise.

12. In so far the appeal against acquittal is concerned, when the trial Court has come to one conclusion and that conclusion is also possible, merely because the Appellate Court is of the view that another view is also possible, the appellate Court cannot interfere and reverse the Order of acquittal.

13. In so far the facts of this case is concerned, for the receipt of Rs.500/- the appellant has been convicted under Section 13(1)(d) r/w. Sec.13(2). It cannot be said that it is not possible to arrive at a

conclusion that the offence does not attract Section 7 of the Act. Such a conclusion is also possible. Under those circumstances, the appeal against acquittal of the appellant of the charge under Section 7 cannot be interfered with. Therefore, the appeal against acquittal is dismissed.

14. In so far the conviction under Section 13(1)(d) r/w Sec.13(2) of the Act is concerned, the evidence adduced is cogent and there is no reason to set aside the finding of the trial Court. This is a case of trap. From the evidence of Pws.1 and 2, the receipt of bribe by the accused is proved. The phenolphthalein Test proved positive. Therefore, the receipt of the money by the accused is proved. The accused has not offered any explanation for the receipt of the money. Further, the money was concealed in-between two dhothies in the rack and the Test on the two dhothies also proved positive. Therefore, the fact that the accused received the amount from PW1 and he concealed it in-between two dhothies kept in the rack is also proved. The explanation offered by the accused that he received that amount as arrears of tax, does not appear to be true in view of the fact that the money was not in the drawer but in-between dhoties kept in the rack. Further, the accused has not proved his explanation. Therefore, the fact that the accused received the amount as bribe is proved. The evidence of P.W.1 is cogent and categorical. It has not been diluted in any manner in the cross-examination. The evidence of P.W1 is also corroborated by P.W.2/Assistant Executive Engineer, a responsible Officer of the State. He has also proved the demand made by the accused at the time of trap. The mahazar also corroborates the evidence of P.Ws.1 and 2. Therefore, the guilt of the accused is proved and therefore the offence under Section 13(1)(d) r/w Sec.13(2) is proved.

15. It is true that the dhothies, between which the amount was concealed, were not seized. The Investigating Officer has stated that " we did not think that it was necessary to seize the dhothies also". Considering the fact that the mahazar was signed by P.W.2/Assistant Executive Engineer and that he has spoken to about the contents of the mahazar in evidence, the non-seizure of the dhoties does not, in any way, affect the case of the prosecution, though such materials also should have been seized. In these circumstances, the offence u/s.13(1)(d) r/w Sec.13(2) has been proved beyond all reasonable doubts from the evidence adduced. Therefore, the conviction u/s.13(1)(d) r/w. Sec.13(2) is legal and valid, and there is no reason to set aside the same; the conviction is confirmed. The appeal against conviction is dismissed.

16. In view of the fact that the trial Court has convicted and imposed a minimum sentence of one year, it cannot be altered since this Court cannot give a sentence less than the minimum sentence.

17. In the result, the appeal against acquittal is dismissed, and the appeal against conviction is also dismissed.

pb

To
1. State of Tamil Nadu
rep. by the Inspector of Police
Vigilance and Anti-corruption,
Coimbatore.

2. I Addl. Sessions Judge and Chief Judicial Magistrate,
Coimbatore.